



**DEFENCE FOI 379/24/25**

**STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982**

1. I refer to the request by [REDACTED] (the applicant), received by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

*I request all types of briefs' relating to the recent decision by VCDF (AM Robert Chipman AO CSC), not to retrospectively Force Assign members of the Air Command Band for their deployment to East Timor in December 2000 (Ref No: MS24-001364 - provided by recent correspondence about this from Hon Matt Keogh, Minister for Veterans' Affairs), despite any service rendered in East Timor being determined 'warlike service' during this time period.*

*Furthermore I request all types of briefs' relating to the Defence policy referred to in this correspondence, regarding Forces Entertainment Tours which indicates that ADF band members performing in active war zones are to be assigned as 'visitors' to ADF operations and will not be eligible for veterans benefits as result of these deployments.*

*This request is for all types of briefs' relating to these decisions about these issues which provide the background into this decision made my VCDF.*

*Timeframe: from date: 20/04/2023 - 12:00am*

*Timeframe: to date: 17/11/2024 - 12:00am*

**Background**



### **FOI decision maker**

4. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

### **Documents identified**

5. I have identified 12 documents as falling within the scope of the request.
6. The decision in relation to each document is detailed in the schedule of documents.

### **Exclusions**

7. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents, and documents sent to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

### **Decision**

8. I have decided to:
  - a. partially release 12 documents in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act on the grounds that the deleted material is considered exempt under sections:
    - i. 47C [public interest conditional exemptions – deliberative processes] of the FOI Act;
    - ii. 47E [public interest conditional exemptions – certain operations of agencies] of the FOI Act; and
    - iii. 47F [public interest conditional exemptions – personal privacy] of the FOI Act.
  - b. remove irrelevant material in accordance with section 22 of the FOI Act.

### **Material taken into account**

9. In making my decision, I have had regard to:
  - a. the terms of the request;
  - b. the content of the identified documents in issue;
  - c. relevant provisions of the FOI Act; and
  - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

### **Section 22 – Access to edited copies with exempt or irrelevant matter deleted**

10. Section 22 of the FOI Act permits an agency to prepare and provide an edited copy of a document where access to an exempt document is refused or where access to a document would disclose information that would reasonably be regarded as irrelevant to the request.
11. Documents identified in the schedule of documents as being released in part contain exempt and irrelevant material that does not relate to the request.

12. I am satisfied that it is reasonably practicable to remove the exempt and irrelevant material and release the documents to you in an edited form.

### **Section 47C – Public interest conditional exemptions – deliberative processes**

13. Section 47C(1) of the FOI Act states:

*(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency.*

14. Section 47C(2) of the FOI Act, and paragraph 6.62 of the Guidelines outlines material that does not include deliberative matter, that is operational information and purely factual material. Paragraph 6.70 of the Guidelines provide that:

*[p]urely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.*

15. Examination of the documents identified material specific to processes undertaken by Defence to administer and implement policy. There was a known requirement for Defence to conduct a review of the force assignment of Australian Defence Force (ADF) personnel. The material was specifically obtained and prepared for a deliberative process which required exercising judgement to develop and make a decision from different options. The content contains deliberative processes used to provide recommendations to the Vice Chief of the Defence Force (VCDF). The recommendations were used by VCDF to make a policy decision. Additionally, the content contains deliberative processes used to brief the minister. There is a risk that release of the deliberative matter contained in the documents would harm the conduct of the operation of Defence business, including the ability for Defence to present and communicate preliminary advice at both the highest levels of Defence senior leadership and the Government.
16. The documents contain matter that meets the definition of deliberative material. Where the content is purely factual, it is embedded in, or intertwined with the deliberative content and cannot be excised.
17. Accordingly, I am satisfied that the information contained within the documents is conditionally exempt under section 47C of the FOI Act.

### **Section 47E – Public interest conditional exemptions – certain operations of agencies**

18. Section 47E(c) of the FOI Act states:

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

*(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.*

19. Paragraph 6.102 of the Guidelines provide that:

*Where the document relates to the agency's policies and practices in relation to the assessment and management of personnel, the decision maker must address both elements of the conditional exemption in s 47E(c), namely, that:*

- *an effect would reasonably be expected following disclosure.*
  - *the expected effect would be both substantial and adverse.*
20. The documents contain information about Defence policy decisions about recognition of service for current and former ADF personnel that are not publicly available. Defence owes a duty of care to current and former ADF members, and their families, to protect their wellbeing and privacy. Disclosure could reasonably be expected to substantially adversely impact Defence's staff management function and responsibility to maintain appropriate workplace health and safety standards.
  21. Paragraphs 6.110-111 of the Guidelines, require an assessment, conducted on a case-by-case basis and based on objective evidence, be carried out to determine whether it is appropriate to apply section 47E(c). The type of objective evidence needed to decide that disclosure of personal information may pose a work health and safety risk is dependent on all the circumstances.
  22. It is necessary to consider the substantial adverse impacts that disclosure would, or could reasonably be expected to cause, noting that release under the FOI Act amounts to release to the world at large. I consider that release could be detrimental to the health and wellbeing of personnel, particularly to those within the cohort who may not be aware of the decisions, and who may be disadvantaged by the outcome.
  23. Section 47E(d) of the FOI Act states:
 

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

*(d) have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.*
  24. Paragraph 6.115 of the Guidelines provide that:
 

*The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its operations in an expected manner.*
  25. In the case of 'ABK' and Commonwealth Ombudsman [2022] AICmr 44, the Information Commissioner (IC) found that where the direct email addresses and phone numbers of agency staff are not publicly known, they should be conditionally exempt under section 47E(d). The IC made this determination due to the reasonable expectation that releasing direct contact details would undermine the operation of established channels of communication with the public. Further, the IC accepted that staff who were contacted directly could be subject to excessive and abusive communications, which may give rise to work health and safety concerns.
  26. Material within the documents contains the names and direct contact details of Defence personnel, including those of junior officials who supported preparation of the documents. If the contact details of Defence personnel were made publicly available, it would have substantial adverse effect on the proper and efficient operation of existing public communication channels. I am satisfied of a reasonable expectation that the information could be used inappropriately, in a manner which adversely affects the health, wellbeing and work of Defence personnel. Disclosure of names, email addresses and phone numbers could, therefore, reasonably be expected to prejudice the operations of Defence.

27. In addition, material within the documents contains deliberative, or operationally sensitive policy matters, relating to Defence's primary role of defending Australia and its national interests, promoting security and stability, and supporting the Australian community. Releasing the material could reasonably be expected to have a substantial adverse impact on the proper and efficient conduct of the Department, by disclosing information regarding its thinking processes, methods or conduct that is not otherwise well-known, and which would impede the delivery of the Department's functions.
28. I have also considered that disclosure of the identified material within the documents could reasonably be expected to prejudice the Department's ability to effectively make decisions about service recognition for former and current members of the ADF.
29. Paragraph 6.112 of the Guidelines provide that I consider whether disclosure of the information, 'would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient.' Direct contact details of Defence personnel are not publicly available and more appropriate communication channels are already available. I am satisfied that release of the information would not lead to any efficiencies in Defence processes.
30. Accordingly, I am satisfied that the information contained within the documents is exempt under section 47E of the FOI Act.

#### **Section 47F – Public interest conditional exemptions – personal privacy**

31. Section 47F(1) of the FOI Act states:

*A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*
32. The FOI Act shares the same definition of 'personal information' as the *Privacy Act 1988* (Cth). The Guidelines provide that:

*6.123 Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:*

  - (a) whether the information or opinion is true or not; and*
  - (b) whether the information or opinion is recorded in a material form or not.*
33. The documents contain personal information of other persons. This includes their names, and specific details which would reasonably identify third parties. To assess whether the disclosure of personal information is unreasonable, the following factors were considered, in accordance with section 47F(2):
  - a. the extent to which the information is well known;
  - b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
  - c. the availability of the information from publicly accessible sources; and
  - d. the effect the release of the personal information could reasonably have on the third party.
34. The specific personal information listed is not well known and the information is not readily available from publicly accessible sources.

35. Accordingly, I am satisfied that the documents are conditionally exempt under section 47F of the FOI Act.

**Public interest considerations – sections 47C, 47E and 47F**

36. Section 11A(5) of the FOI Act states:

*The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.*

37. I have considered the factors favouring disclosure as set out in section 11B(3) [factors favouring access] of the FOI Act. The relevant factors being whether access to the document would:

*(a) promote the objects of this Act (including all the matters set out in sections 3 and 3A); and*

*(b) inform debate on a matter of public importance.*

38. I have not taken any of the factors listed in section 11B(4) [irrelevant factors] of the FOI Act into account when making this decision.

39. Paragraph 6.233 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that release of this information could reasonably be expected to prejudice:

- *the protection of an individual's right to privacy;*
- *the interest of an individual or a group of individuals;*
- *the e management function of an agency; and*
- *the personnel management function of an agency.*

40. I acknowledge that it is in the public interest that Defence operates efficiently and productively, and undertakes its functions in a transparent and proper manner. I consider there is public interest in ensuring that Defence effectively manages policy, and makes consistent policy decisions. Disclosure of deliberative processes and decisions about recognition of service for the ADF unreasonably exposes the management functions of Defence, prejudices the interest of an individual or a group of individuals, and inherently risks effective delivery of services to the ADF. It also substantially limits Defence's ability to operate effectively and efficiently.

41. It is in the public interest that Defence efficiently and productively operates with regard for the health and wellbeing of its personnel, both current and former. As I have established above, the release of the names, email addresses and phone numbers of Defence personnel can reasonably be expected to prejudice the management and personnel management functions of Defence. Existing communication channels and processes enable efficient and appropriate liaison with the public. The direct contact details of Defence personnel should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.

42. Disclosure of the information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

43. I am satisfied, based on the above particulars, that the public interest factors against disclosure outweigh the factors for disclosure. On balance, it is against the public interest to release the identified information to the applicant.
44. Accordingly, I find that information across the documents is exempt under sections 47C, 47E and 47F of the FOI Act.



Accredited Decision Maker  
Vice Chief of the Defence Force Group  
Department of Defence